रजिस्ट्री सं० डी० एल०-33004/99

REGD. NO. D. L.-33004/99

भारत का राजपत्र
The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (iii)

PART II—Section 3—Sub-section (iii)

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं. 130] नई दिल्ली, बृहस्पतिवार, दिसम्बर 2, 1999/अग्रहायण 11, 1921

No. 130] NEW DELHI, THURSDAY, DECEMBER 2, 1999/AGRAHAYANA 11, 1921

भारत निर्वाचन आयोग

अधिसूचना

नई दिल्ली, 26 नवम्बर, 1999

आ. अ. 171(अ).—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में निर्वाचन आयोग वर्ष 1998 की निर्वाचन अर्जी संख्या 1 में मध्य प्रदेश उच्च न्यायालय, इन्दौर के तारीख 2-8-99 के आदेश को एतद्द्वारा प्रकाशित करता है।

(न्यायालय आदेश के लिए अंग्रेजी भाग देखें)

[सं. 82/म.प्र.-लो.स/(1/98)/99]

आदेश से,

एल. एच. फारुकी, सचिव

ELECTION COMMISSION OF INDIA

NOTIFICATION

New Delhi, the 26th November, 1999

O. N. 171 (E).—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951) the Election Commission hereby publishes the order of the High Court of Madhya Pradesh, Indore dated 2-8-99 Election Petition No. 1 of 98.

HIGH COURT OF MADHYA PRADESH, INDORE BENCH, INDORE

BEFORE : ELECTION JUDGE HON'BLE SHRI N. K. JAIN, J

ELECTION PETITION NO. 1/98

Chhatar Singh

Vs.

Gajendra Singh & two others

Shri C. L. Yadav, learned counsel for petitioner.

Shri Shekhar Bhargav, learned Sr. Counsel appearing with Shri S. M. Dagaonkar, for respondent No. 1.

ORDER

(Passed on 02-08-1999)

Aggrieved by the order dated 05-02-1998 (Annexure P-11) of the Returning Officer, Dhar, rejecting nomination papers filed by the Petitioner as a candidate to contest General Elections for 12th Lok Sabha from Dhar (S.T.) Lok Sabha Constituency, held on 22-02-1998, in which respondent No. 1 Gajendra Singh was declared elected defeating respondents No. 2 and 3; the Petitioner has filed this Election Petition on under section 81 of the Representation of People Act, 1951, (for short, 'The R. P. Act'), calling in question the election of respondent No. 1 on the ground specified in clause (c) of section 100 (1) of the R.P. Act, to obtain undernoted reliefs :

(i) that the election of respondent No. 1 be declared as void; and

(ii) that order dated 05-02-98 (Annexure P-11) be quashed.

02 Although the 12th Lok Sabha has since been dissolved rendering the relief No. 1 above as infructuous, the Petitioner has been allowed to prosecute this petition as the order (Annexure P -11) still looms large and may hamper his prospects to contest the for coming Lok Sabha and other future elections to a Public Office.

03. Facts material for the purpose of this petition are not in dispute. On 11-03-1981, petitioner Chhatar Singh was convicted under section 302, 307, 307 & of I. P. C. and sentenced to undergo imprisonment for life for the former charge, and 7 years R.I. each for the latter three charges, by the 1st Addl. Sessions Judge, Dhar, in S. T. No. 66/81. On appeal by the petitioner, his conviction and sentence on one of the latter three charges u/s. 307 IPC alone was set-aside and rest of his appeal was dismissed by the Indore Bench of Madhya Pradesh High Court, vide judgment dated 17-08-1984, in Criminal Appeal No. 349/81 . The petitioner who was in jail during pendency of the appeal, continued to be in prison until on 23-01-1988, when he was released on probation by the State Government under an order of licence (vide Annexure P-6), passed on 23-12-1987, u/s. 2 of the M. P. Prisoners (Release on Probation) Act, 1954, (for short, 'The M.P. Act'). The petitioner was placed under the supervision of one Mukund S/o Sukiya of village Lunheda, as per terms and conditions contained in the licence, the term of which was to expire on 18-04-1995. The petitioner after his release as aforesaid, contested elections for M. P. Legislative Assembly in 1993, Janpad Panchayat, Manawar, in 1994; and, 11th Lok Sabha in 1996, of which he was a member till its dissolution.

04. Along with his nomination papers filed in four sets for the 12th Lok Sabha, the Petitioner also filed on Oath a declaration in the prescribed form, disclosing all the aforesaid facts regarding his conviction and subsequent release on probation. The Collector, Dhar, who was also the Returning Officer, for Dhar Parliamentary Constituency, suo motu raised objection as to the disqualification of the petitioner and after hearing him, passed the impugned order (Annexure P -11) rejecting his nomination papers on the ground that disqualification incurred by him on account of his conviction was no over notwithstanding his release under the M. P. Act, 1954. The learned Returning Officer was of the view that the petitioner's release u/s. 2 of the M. P. Act, did not amount to release u/s. 8 (3) of the R. P. Act.

05. The petitioner has called in question the election of respondent No. 1 on the ground that his nomination papers were wrongly rejected by the Returing Officer. It is contended that the release u/s. 2 of the M. P. Act, was unqualified and put an end to the conviction and sentences passed against him by the Court. Since more than 6 years period had elapsed after his release on 23-01-1988 and much before his filing the nomination papers, the disqualification, as envisaged u/s. 8 (3) of the R. P. Act, came to an end.

06. Respondent No. 1—Gajendra Singh, the successful candidate has alone filed written statement in oppugnation and it is contended that the release of the petitioner u/s. 2 of the M.P. Act, was not unconditional or absolute and did not wipe out the conviction or the sentence awarded to the petitioner. The petitioner remains a convict and the sentence passed against him still survives rendering him disqualified for being Member of Either House of the parliament, u/s. 8(3) of the R.P. Act r/w. Article 102(1)(e) of the constitution of India.

07. The other two respondents No. 2 and 3 (the latter is the wife of the petitioner) chose to remain absent, hence proceeded against, ex-parte. They are proforma parties even otherwise and no relief is claimed against them.

08 On the basis of the pleading I framed under noted issues on 25-06-1999, when the learned counsel for both the sides indicated agreement as recorded in the proceeding , that the petition rises no disputed question of fact and the issues being purely of law require no evidence :

1. (a) Whether release of the petitioner on 23-1-88 by the State Government under section 2 of the M. P. Prisoners Release on Probation Act, 1954, fell within the perview of release under section 8(3) of the Representation of People Act, 1951 ?

   (b) Whether the nomination papers of the petitioner for election to 12th Lok Sabha from Dhar (Scheduled Tribe) Lok Sabha Constituency were wrongly rejected by the Returing Officer ?

2. Relief and costs "

09. I have heard Shri C. L. Yadav, learned Counsel for the petitioner and Shri Shekhar Bhargava, learned Sr. Counsel appearing with Shri S. M. Daganokar for respondent No. 1 Shri G. M Chaphekar, learned Sr. Counsel, on the request of the Court also argued the matter.

10. Shri Yadav maintained that the petitioner's release under the M P. Act was unqualified and set the petitioner free from prison and all other restrictions otherwise imposed on a prisoner. The release, he submitted, brought an end to the sentence awarded to the petitioner and, therefore, the disqualification incurred by him on his conviction was also removed at the expiry of 6 years period from his release, as envisaged u/S. 8(3) of The R. P. Act. Shri Yadav thus submitted that the Returning Officer was not justified in rejecting Petitioner's nomination.

11. Shri Bhargava, learned Sr Counsel, on the other hand, contended that grant of licence for release on probation under The M.P. Act did not in any way interfere with the order of conviction and sentence passed by the Court which still stands as it was. Notwithstanding his release u/S. 2 of The M P. Act, the petitioner, pointed out the counsel, still continued to be under the control of the State under invisible fetters and can, therefore, legitimately be regarded under imprisonment.

12. Shri G.M. Chaphekar, Sr. Counsel, who appeared at the request of the Court, supported the arguments advanced by Shri Shekhar Bhargava. He laid emphasis on the word "imprisonment" occurring in Sec. 8(3) of The R. P. Act and submitted that the "release", as envisaged in this Sub-section has to be construed with reference to the word "imprisonment". He contended that the release has to be from imprisonment i.e., the release at the expiry of the period of sentence imposed on conviction.

13. Having considered submissions made by the learned counsel for the parties and Shri G M. Chaphekar and carefully gone through the relevant povisions of law, I find myself unable to accede to the contentions raised on behalf of the petitioner.

14. Article 102(1)(c) of the Constitution of India mandates, *inter-alia,* that a person shall be disqualified for being chosen to as, and for being, a Member of either House of Parliament. *if he is so disqualified by or under any law made by Parliament.* Section 8(3) of The R.P. Act, 1951, is such a 'law' which pronounces disqualification on conviction for a specified term till 6 years from the date of *release.* The provision thus reads :

> (3) A person convicted of any offence and sentenced to imprisonment for not less than two years other than any offence referred to in sub-section (1) or sub-sec. (2) shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

15. The imbred question is as to what is meant by the word *release* used in the aforesaid provision?

16. In terms of Schedule III to the Constitution, candidate for election to Parliament House required to make an Oath or Affirmation that he "will bear true faith and allegiance to the Constitution of India as by law established". The object of Section 8(3) is to seek a person whose *stigma* of conviction becomes *stale* by lapse of time i e., 6 years from release. This implies that there should be *release* from imprisonment i.e., expiry of the period of sentence imposed on conviction and after release further period of 6 years to pass so as to make a man immune from ill-effect of conviction which looms large. The object behind the word *release* implied in the provision, has to be kept in focus. If one were to take release, on bail or probation, then the consequence may be disastrous. To illustrate, 'X' is convicted in June, 1990 and appeals. He obtains release on bail by order of suspension of execution of sentence soon thereafter in 1990 itself, say on 30-7-1999 His appeal remains pending beyond six years from 30-7-1990. To illustrate it further 'X' on conviction in June, 1990, obtains release on probation under the M. P. Act, 1954, soon thereafter, say on 30-7-1999. He remains on probation beyond 6 years, but later on his licence is revoked and he is put back to prison. Now, can any one say that disqualification is over in terms of Sec. 8(3) due to passage of 6 years from release on bail or on probation, though conviction stood intact? Does Section 8(3) lead to that ? Answer is emphatic 'No'.

17 What is noticeable is that the provision speaks of release in the context of conviction and does not say any release "on bail or probation". Logically it is release on termination of imprisonment i.e., expiry of term as imposed and not release on bail or for different custody like probation officer or surety. It is not open to the court to add words "on bail" or "on probation" after the word "release" when legislative intent did not rule that way. The Probation of Offenders Act, specifically provides (vide Sec. 12) that no disqualification is attached to a person given benefit of probation under that Act. But, such is not the case in case of prisoner's release under The M.P. Act of 1954. By process of appreciation we cannot introduce a provision which is not there.

18. I may respectfully recall the observation of Lord Denning in *Seaford Estate* Vs. *Asher* (1949) 2 All E.R. 155 (as extracted in 1984 SC 135) : 'A judge must not alter the material of which the Act is woven, but he can and should iron out the creases'. There are not creases here and the legislative intent is very clear.

19. The release from prison u/s. 2 of the Act of 1954 is not unconditional like the release on completion of sentence. The person released u/S. 2, is placed under the supervision or authority of a Government Officer or of a person of his own religion or a recognised Institution or Society willing to take charge of him. He has to adhere to the conditions as enumerated in Form-D of the licence prescribed under Rule 7 of the Rules, 1964, framed under the Act of 1954. The licence granted u/S. 2 can be revoked by the Government any time and the prisoner thereupon shall return to prison to serve out the remaining sentence (vide Ss. 6 and 7). Section 4 of the Act clearly lays down that the period of release under the provisions of this Act shall be reckoned as *imprisonment* for computing period of sentence served. The *release* under the Act is, therefore, not a release from conviction or imprisonment and does not amount to termination of the imprisonment, as envisaged u/S. 8(3) of The R.P. Act. It is only a change of custody from the walled prison to that of a Government Servant, or a private Person, or an Institution, or Society as may be recognised by the Government.

20. Dealing with a similar question of removal of disqualification u/S. 7(b) of The R.P. Act, as it stood then, in a case where sentence of imprisonment awarded to a person was later on remited u/S. 401 of the Code of Criminal Procedure (old), the Supreme Court in *Sarat Chandra* (AIR 1961 SC 334), held :

"A person convicted and sentenced to a term of rigorous imprisonment of more than two years is disqualified under S. 7(b) when five years have not passed after his release from jail and the disqualification has not been removed by the Election Commission. The remission of his sentence under S. 401, Criminal P.C. and his release from jail before two years of actual imprisonment would not reduce his sentence into one of a period of less than two years and save him from incurring the disqualification under S. 7(b)."

The apex court observed :

"An order of remission does not in any way interfere with the order of the court; it affects only the execution of the sentence passed by the court and frees the convicted person from his liability to undergo the full term of imprisonment inflicted by the court, though the order of conviction and sentence passed by the court still stands as it was The power to grant remission is executive power and cannot have the effect which the order of an appellate or revisional court would have of reducing the sentence passed by the trial court and substituting in its place the reduced sentence adjudged by the appellate or revisional court".

21. Disposing of various petitions challenging the vires of Sec. 433A of Cr. P.C. (as inserted by the Amendment Act, 1978), vis-a-vis various rules of remissions and short sentencing legislations, their Lordships of the apex court, in *Maru Ram* (AIR 1980 SC 2147), answering the question; "what is the jural consequence of a remission of sentence"? observed: "an order of remission does not wipe out the offence, it also does not wipe out the conviction".

Their Lordships also referred to the ratio in *Godse's* case (AIR 1961 SC 600), wherein it was held that "remission limited in time, helps in computation but does not ipso jure operates as release of the prisoner".

Their Lordships further in para 71 referred to the provisions of U.P. Prisoners (Release on Probation) Act, 1938, (which are para materia to the provisions of M.P. Act of 1954), and observed :

"the expression 'prison' and 'imprisonment' must receive a wider connotation and include any place notified as such for detention purposes. 'Stone walls and iron bars do not a prison make'; nor are 'stone walls and bars' a sine quo non to make a jail. Open jails are capital instances. Any life under the control of the State, whether within the high-walled world or not may be a prison if the law regards it as such. House detentions, for example. Palaces, where Gandhiji was detained, were prisons. Restraint on freedom under the prison law is the test. Licensed releases where instant recapture is sanctioned by the law, and, likewise, parole, where the parole is no free agent and other categories under the invisible fetters of the prison law may legitimately be regarded as imprisonment."

(emphasis supplied)

22. The M.P. Act of 1954 also sanctions recapture of the person released on licence. The parole under the Act is not free agent and the scheme of the Act clearly speaks of invisible fetters. The period of release under the Act has, therefore, be regarded as imprisonment.

23. This Court in *Ramesh* (1992 MPLJ 271) held:

"A prisoner released under the M.P. Prisoners Release on Probation Act, 1954, and the rules made thereunder, is not set at liberty with absolute freedom but he is released on licence subject to various conditions on breach of which his licence may be revoked and he may be remanded back to custody and committed prison to serve out his remaining sentence. The prisoner so released on licence remains under the deemed custody."

24. It is aptly said that "public office is a public trust" Such a trust cannot be reposed in a person on bail or probation. For quite some time there has been out cry against alleged *politician- criminal nexus* and the criminalisation

of politics. The Government of India had in the past appointed 'Bohra Committee' to recommend suitable measures to deal with the menace threatening out body politics. Government of Madhya Pradesh also appointed Sohani Commission to go into the matter. Indeed, Section 8 of The R.P. Act is also intended to achieve the same object. It is a step forward towards purity in election and insist on persons free from criminal taint. In this back drop any loose interpretation of the word *release* occurring in Sec. 8(3) so as to include within its ambit a release on bail or on probation, would only defeat the object. Persons convicted of heinous offences like murder, dacoity etc. with their political clout may secure release on probation and find their ways to our democratic institutions like Parliament and the State Legislative Assemblies and may even occupy high public offices. It is well settled that in selecting out of different interpretations the court will adopt that which is just reasonable and sensible rather than that which may lead to absurdity and anomaly (see : Principles of Statutory Interpretation, by Justice G.P. Singh, 6th Edition, Chap. 2, Syn. 4).

25. For what I have said above, the issues No. 1 (a) and (b) deserve to be answered in negative and it is accordingly held that the petitioner's nomination was rightly rejected by the Returning Officer, Dhar.

26. Before I say omega, I must record my deep appreciation for the valuable assistance rendered by the learned counsel for the parties and particularly, Shri G.M. Chaphekar, Sr. Advocate, in deciding this petition. I also commend the well reasoned order passed by the Returning Officer, Dhar.

27. In the result I dismiss the petition with costs. Counsel's fee is fixed at Rs. 2,500/-, if certified. Security amount, if any, be adjusted towards the costs awarded above.

28. A copy of this Order be forwarded to the Chief Secretary, Government of Madhya Pradesh, Bhopal, for such action as may be deemed necessary.

Dated 2-08-1999

(N K JAIN)

ELECTION JUDGE

[No. 82/MP-HP/(1/98)/99]

By Order

L.H. FARUQI, Secy.

3526-GI/99-2

Printed by the Manager, Govt. of India Press, Ring Road, Mayapuri, New Delhi-110064
and Published by the Controller of Publications, Delhi-110054—1999.